



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON, D.C. 20370-5100

CRS
Docket No: 6239-00
9 January 2001

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) 10 U.S.C. 1552

Encl: (1) DD Form 149 w/attachments
(2) Case Summary
(3) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, an enlisted member of the Navy, filed enclosure (1) with this Board requesting, in effect, that his naval record be corrected by showing that he was not reduced in rank at the 22 May 1995 nonjudicial punishment (NJP).

2. The Board, consisting of Mr. Pfeiffer, Mr. Whitener, and Ms. Humberd, reviewed Petitioner's allegations of error and injustice on 29 November 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Although it appears that enclosure (1) was not filed in timely manner, it is in the interest of justice to waive the statute of limitations and review the application on its merits.

c. Petitioner reenlisted in the Navy on 8 December 1994 after more than 19 years of prior active service.

d. Petitioner then served well and without disciplinary incident until 22 May 1995 when he received NJP for failure to obey a lawful general regulation, dereliction of duty, making a false official statement, and wrongful appropriation of government monies. The punishment imposed consisted of a

reduction in paygrade from DK1 (E-6) to DK2 (E-5).

e. On 21 May 1998 his commanding officer (CO) strongly recommended that Petitioner be reinstated to DK1. However, this request was denied by the Chief of Naval Personnel.

f. Petitioner, in his application, states that the punishment was too harsh since his wrongful appropriation of government monies was based on personal need, and he pledged to immediately pay back the money.

CONCLUSION:

Upon review and consideration of all the evidence of record, the Board concludes that Petitioner's request warrants partial relief. The Board's conclusion in this regard is primarily based on its belief that although an unsuspended reduction to DK2 may have been appropriate at the time of the NJP, given Petitioner's fine record of service both prior to and after the NJP, his request for reinstatement to DK1 should have been granted, in accordance with the CO's recommendation. Accordingly, the Board concludes that the record should be corrected to show that Petitioner's request was granted by the Chief of Naval Personnel as of 16 June 1998 with a time in rate of 1 June 1998.

In view of the foregoing, the Board finds the existence of an injustice warranting the following corrective action.

RECOMMENDATION:

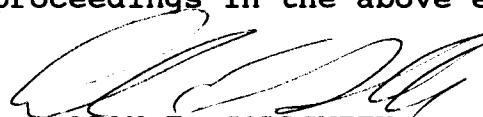
a. That Petitioner's naval record be corrected to show that he was reinstated to DK1 as of 16 June 1998 with a time in rate of 1 June 1998.

b. That any material or entries inconsistent with or relating to the Board's recommendation be corrected, removed or completely expunged from Petitioner's record and that no such entries or material be added to the record in the future.

c. That any material directed to be removed from Petitioner's naval record be returned to the Board, together with a copy of this Report of Proceedings, for retention in a confidential file maintained for such purpose, with no cross reference being made a part of Petitioner's naval record.


4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder



ALAN E. GOLDSMITH
Acting Recorder

5. Pursuant to the delegation of authority set out in Section 6(e) of the revised Procedures of the Board for Correction of Naval Records (32 Code of Federal Regulations, Section 723.6(e)) and having assured compliance with its provisions, it is hereby announced that the foregoing corrective action, taken under the authority of reference (a), has been approved by the Board on behalf of the Secretary of the Navy.



W. DEAN PFEIFFER
Executive Officer